breached its agreement of October 6, 1930, to remove its buildings from the condemned portions of its property and turn such portions over to it, it is entitled to recover damages equivalent in amount to interest upon the partial payments made to the Institute at the rate of 5% per annum from the respective dates of said payments. We are in accord with the foregoing finding of the trial court as to the counterclaim and find no warrant in law for the allowance of the damages claimed by the city.

Plaintiff's motion heretofore made to transfer this appeal to the Supreme Court, which was reserved to hearing is at this time denied.

No clear right to the issuance of a writ of mandamus having been etsablished the judgment of the Superior court is affirmed.

Other points have been urged and considered but in the view we take of this case we deem further discussion unnecessary.

Judgment Affirmed.

Scanlan, P. J., and Friend, J., concur.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1942

No. 1086

Appeal from the Supreme Court of Illinois, No. 26665

The People of the State of Illinois on relation of THE MOODY BIBLE INSTITUTE OF CHICAGO, a corporation not for profit, *Appellant*,

vs.

CITY OF CHICAGO, a municipal corporation, et al., *Appellees*.

MOTION OF APPELLEES TO DISMISS OR AFFIRM.

May it Please the Court:

Come now the City of Chicago, a municipal corporation, et al. appellees herein, by Barnet Hodes, Corporation

Counsel, and move the court to dismiss with costs the appeal taken herein to this court by The Moody Bible Institute of Chicago, a corporation, appellant, upon the following grounds:

1. The decision of the Supreme Court of Illinois was based primarily on local law and questions of local law are not open to reexamination in this court.

In the alternative, appellees move this court to affirm the judgment of the Supreme Court of Illinois on the following grounds:

1. No substantial Federal question affording a basis for a review by this court is presented by the appellant.

2. The Federal question which appellant attempts to raise in this court is foreclosed by the prior decisions of this court.

Respectfully submitted, Barnet Hodes, Corporation Counsel of the City of Chicago, Attorney for appellees.

Joseph F. Grossman, First Assistant Corporation Counsel; J. Herzl Segal, Assistant Corporation Counsel, of Counsel.